

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

OCTOBER 1997 SESSION

FILED

October 17, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

MICHAEL R. SOUTH,

Appellant,

V.

BILLY COMPTON, WARDEN,

Appellee.

) C.C.A. No. 02C01-9610-CC-00325

)

) Lake County

)

) Honorable Joe G. Riley, Jr., Judge

)

)

) (Habeas Corpus-Aggravated Rape)

)

FOR THE APPELLANT:

Michael R. South, Pro se
Route 1, Box 330
Tiptonville, TN 38079-9775

FOR THE APPELLEE:

John Knox Walkup
Attorney General & Reporter

Kenneth W. Rucker
Assistant Attorney General
Criminal Justice Division
450 James Robertson Parkway
Nashville, TN 37243-4351

C. Phillip Bivens
District Attorney General
P.O. Drawer E
Dyersburg, TN 38024

OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

The appellant, Michael R. South, pled guilty to aggravated rape. He was sentenced to twenty years incarceration in the Tennessee Department of Correction. He, thereafter, filed a petition for habeas corpus relief. In his petition he alleged that the indictment against him was insufficient for failing to allege a mens rea. He contends his conviction is void. The trial court dismissed the petition finding that it was not proper for habeas corpus review. The trial court based this finding on the fact that the appellant's conviction was not void on its face and that his sentence had not expired. He appeals this dismissal. Upon review, we affirm.

The appellant contends that the indictment against him did not sufficiently allege the mens rea for aggravated rape.¹ The appellant bases his theory on State v. Hill, No. 01C01-9508-CC-00267 (Tenn. Crim. App., at Nashville, filed June 20, 1996). We note that several panels of this Court have refused to follow Hill and that it is currently pending review by the Tennessee Supreme Court.²

In Tennessee an indictment must (1) inform the defendant of the precise charges; (2) enable the trial court to enter an appropriate judgment and sentence upon conviction; and (3) protect the defendant against double jeopardy. State v. Trusty, 919 S.W.2d 305, 309 (Tenn. 1996). It must be stated in ordinary and concise language so that a person of common understanding will know what is intended. Warden v. State, 381 S.W.2d 244 (Tenn. 1964).

The majority of this panel declines to follow Hill. We find that the appellant's indictment sufficiently alleged the elements of aggravated rape and was constitutionally sound. He was fully apprised of the charges against him in ordinary and concise language. The appellant's indictment gave the convicting

¹The indictment against the appellant stated that he: "did unlawfully and coercively, while armed with a weapon, to wit: a knife, sexually penetrate [the victim], in violation of Tenn. Code Ann. § 39-13-502."

²For example, State v. Wilson, No. 03C01-9511-CC-00355 (Tenn. Crim. App. at Knoxville, filed Mar. 25, 1997); State v. Burrell, No. 03C01-9404-CR-00157 (Tenn. Crim. App. at Knoxville, filed Feb. 11, 1997).

court an adequate basis for subject matter jurisdiction. Therefore, the appellant's conviction is not void and is improper for habeas corpus review.

Accordingly, we find no error of law mandating reversal. The judgment of the trial court is affirmed.

PAUL G. SUMMERS, Judge

CONCUR:

JOHN H. PEAY, Judge

DAVID G. HAYES, Judge